

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

The County of Madison, State of Illinois;)
The County of St. Clair, State of Illinois;)
The County of Monroe, State of Illinois;)
The Wood River Drainage and)
Levee District; The Metro-East)
Sanitary District; The Prairie DuPont)
Levee and Sanitary District;)
The Fish Lake Drainage and Levee District;)
The Southwestern Illinois Flood Prevention)
District Council; The City of Alton, Illinois;)
The Village of Caseyville, Illinois;)
The Village of Dupo, Illinois;)
The Village of East Carondelet, Illinois;)
The City of Granite City, Illinois;)
The City of Madison, Illinois;)
The Village of Pontoon Beach, Illinois;)
The Village of Sauget, Illinois;)
The City of Venice, Illinois;)
The Village of Alorton, Illinois;)
The City of Centreville, Illinois;)
The Village of East Alton, Illinois;)
The City of East St. Louis, Illinois;)
The Village of Fairmont City, Illinois;)
The Village of Glen Carbon, Illinois;)
The Village of Roxana, Illinois;)
James Pennekamp; Kevin Riggs;)
And The Leadership Council)
Southwestern Illinois,)

Plaintiffs,

vs.

The Federal Emergency Management)
Agency; The United States Department of)
Homeland Security; and W. Craig Fugate)
in his Official Capacity as Administrator of)
The Federal Emergency Management)
Agency,)

Defendants.

Case No. 3:10-cv-00919-JPG-DGW

MOTION FOR ORAL ARGUMENT

Pursuant to this Court's Local Rule 7.1(h), plaintiffs respectfully pray that the Court grant them oral argument on the motion to dismiss filed by defendants (the government). As grounds for this relief, plaintiffs state:

1. This case seeks to review a decision of the Federal Emergency Management Agency (FEMA) to de-accredit the levee systems that protect the American Bottoms from the floodwaters of the Mississippi River. If that decision stands, FEMA will issue new final Flood Insurance Rating Maps (FIRMs) for the area. FEMA originally planned to issue the FIRMs in June 2011; it has now postponed the date until August 2011.

2. If FEMA publishes the new final FIRMs in their current form, every borrower from a federally regulated lender whose loan is secured by a mortgage on real property in the area must purchase flood insurance. The failure to do so is an event of default under the loan. Plaintiffs estimate that the total cost of such insurance is in the neighborhood of \$50 million. Many residents of the area simply cannot afford it.

3. Publication of the new final FIRMs in their current form will also be an economic disaster for the area. Within six months, the local communities must adopt draconian land use controls requiring any new construction to start at an elevation higher than projected flood elevations – in some cases 10 or 20 feet about ground level. The added cost of doing so makes new development economically infeasible.

4. The government's motion to dismiss raises three distinct legal issues:

A. When can plaintiffs seek judicial review of FEMA's action under 42 U.S.C. § 4104(g)? The government says we must wait until the

publication of the final FIRMs – i.e., after the damage has been done. Plaintiffs believe that the statute clearly allows review within 60 days after FEMA denied their administrative appeals, but the caselaw on this issue is sparse.

- B. Does FEMA have sovereign immunity from prohibitory injunctive relief to prevent violations of equal protection and due process? The government says yes. Plaintiffs rely on the constitutional exception to sovereign immunity.
- C. Are plaintiffs' claims ripe for review before final publication of the FIRMs? The government says no. Plaintiffs have submitted evidence that the record is sufficiently complete that there is no benefit to waiting until after the damage is done.

5. Whether intentionally or not, the government's motion to dismiss has a tendency to obfuscate rather than clarify the issues. This matter is of such exceptional importance to the community that plaintiffs desire every opportunity to explain their position to the Court.

6. Moreover, a prompt ruling on the government's motion is necessary for plaintiffs to commence discovery. So far, based on their sovereign immunity defense, the government have refused to permit any discovery whatever and the parties agree that this Court's ruling on the motion to dismiss is a prerequisite to any discovery.

Wherefore, plaintiffs respectfully pray that the Court grant them oral argument on the motion to dismiss filed by the government.

Respectfully Submitted,

s/ Thomas D. Gibbons (with consent)

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2011, the foregoing document was filed with the Clerk of Court and served by operation of the Court's CM/ECF system, on all attorneys of record as follows:

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